IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1996 OF 2004

IN

WRIT PETITION NO. 5359 OF 2000

M/s Universal Mines .. Petitioners

V/s

The Collector of Kolhapur & Ors. .. Respondents

Ms.Castellino with Ms.Deepa R. Kamath for the petitioners.

Mr.N.R. Nargolkar, A.G.P. for respondents Nos.1, 3 and 4.

Mr.Sanjeev Sawant for respondent No.2.

Mr.N.V. Bandiwadekar for M/s R.M. Mohite & Co.

CORAM : H.L. GOKHALE &
SMT.NISHITA MHATRE, JJ.

DATE : 29TH SEPTEMBER 2004

P.C. :

1. Heard the counsel for the parties.

2. Writ Petition No.5359 of 2000 came to be dismissed for non-prosecution before another Division Bench on 28th June 2004 when nobody was present on behalf of the petitioners in that Court. An explanation has been given in this application as to why nobody was present. No reply has been filed by the respondents to this application. In the Civil Application, it is

stated that there was change of advocate on record and there was an error in watching the board. Ms.Castellino, learned counsel for the petitioners, states that the advocate concerned was unwell. Inasmuch as there is no reply to the Civil Application, we accept the explanation and recall the order dismissing the petition. The petition will stand restored to the file.

3. Ms.Castellino points out that there was an interim order which was running during the pendency of this petition. The interim order in terms of prayer 10(b)(ii) was passed by Vazifdar, J. on 25th May 2001 on Civil Application No.782 of 2001. This was an order passed in vacation. The Civil Application thereafter reached before the regular Division Bench on 14th September 2001. On that day, the Division Bench recorded that in view of the fact that the interim order was to continue till the decision of the main petition, there need not be any order on the Civil Application. Ms.Castellino prays that the interim order be also restored.

4. Mr.Nargolkar, learned A.G.P. for respondents Nos.1, 3 and 4, points out that the original order at the time of admission of the petition was that the

Collector was to decide the petitioners' application for extension of lease. That application was heard in the meanwhile and an order came to be passed on 20th June 2000 rejecting that application. Mr.Sawant, learned counsel for respondent No.2 Devasthan Management Committee, supports this statement and states that now the lease has been granted to M/s Mohite & Co.

5. Mr.Bandiwadekar, learned counsel for M/s Mohite & Co. fairly states that M/s Mohite & /Co. have not started any work because of the interim order which was passed in the main petition. It is also to be noted that M/s Mohite & Co. had taken out Civil Application No.2400 of 2002 for vacating the interim order and it came to be rejected by an order passed by another Division Bench on 30th January 2003.

6. In this state of affairs, it will be better that the State Government files its reply in the restored petition. The respondent No.2 - Devasthan Management Committee may as well file its reply. The petitioners will join M/s Mohite & Co. as respondent No.6 by carrying out the amendment within one week. This prayer was granted by the Division Bench in its aforesaid order dated 30th January 2003. The petitioners herein had

taken out Civil Application No.1604 of 2004 for vacating the aforesaid order joining M/s Mohite & Co. as respondent. That civil application came to be dismissed along with the petition on 28th June 2004. We do not see any reason to vacate the order passed earlier to join M/s Mohite & Co. and the prayer to restore that Civil Application No.1604 of 2004 is rejected.

7. Mr.Nargolkar states that the reply will be filed on the main petition within 2 weeks by placing the correct facts on record. In the meanwhile, until further orders on the main petition there will be only a status quo with respect to the mining activities.

8. Civil Application stands disposed of with the above order.

(H.L. GOKHALE, J.)

(SMT. NISHITA MHATRE J.)